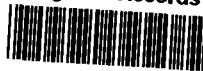


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COUNSEL
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RICHARD C. MELFI
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GEORGE F. MOELLER

February 10, 1999

Sherry Estes
Associate Regional Counsel
U.S. E.P.A. Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3507

Dear Ms. Estes:

This letter represents the Village of Lincoln Heights, Ohio's formal notification of its desire to enter into settlement negotiations with the United States EPA pursuant to the EPA's "Policy for Municipality and Municipal Solid Waste CERCLA Settlements at NPL Co-Disposal Sites" for the Village's use of the "Skinner" landfill in southwestern Ohio. The Village of Lincoln Heights had certain limited activity at the Skinner landfill over the years as a Municipal Solid Waste ("MSW") generator/transporter and requests that the EPA apply its policy to the Village for that activity.

The Village primarily hauled MSW to the landfill during the years of 1967 and 1968. As you are aware, the Village of Lincoln Heights has been joined as a party in Case No.C-1-97-307, The Dow Chemical Co., et al., v. Acme Wrecking Co., Inc. et al., in the United States District Court for the Southern District of Ohio. As a part of that participation, the Village participated in a court ordered alternative dispute resolution (ADR) procedure, involving extensive investigation into each party's involvement with the Skinner Landfill for over a 50 year period. The information developed in that ADR process is subject to a confidentiality agreement. Under that agreement, a party is permitted to disclose all information developed regarding its own involvement with the site, but no other information may be disclosed. I have attached to this letter all of the Village's submissions in the ADR procedure (with a few sections redacted in order to comply with the court's order). Attached is:

Sherry Estes
February 10, 1999
Page 2

- The Village's initial Responses to the Skinner Landfill ADR questionnaire, dated October 9, 1997.
- A November 10, 1997 supplemental letter calling to the allocator's attention newly discovered information regarding the Village's involvement in the site.
- The Village's responses to the Allocator's follow up questions, dated March 31, 1998.
- The Village's Initial Position Paper, dated May 20, 1998.

Not included in this list are the original "Nexus" documents supplied by the EPA to the Plaintiffs which initially indicated the Village of Lincoln Heights' involvement with the site. These documents include the ledgers of Maria Roy Skinner and a letter from Guy Westmoreland, a representative of the Village in response to an EPA questionnaire. It is assumed that these are in the possession of the EPA and are not supplied for this reason. If it would be helpful to supply those documents, I will be happy to do so. Also not included was a memorandum urging the Allocator to adopt the EPA's wisdom in the settlement policy when making his allocation. This memorandum does not include any facts regarding the Village's involvement in the site. If it is determined that this memorandum would be helpful, I will be happy to provide you with a copy of that memorandum also.

Finally, I have attached the Allocator's preliminary findings as they apply to Lincoln Heights specifically. While the Village of Lincoln Heights disputes certain aspects of the Allocator's specific findings with regard to the Village, the Village, for the purposes of this attempt at settlement, suggests that the Allocators findings be adopted.¹

Unfortunately, suggesting the Allocator's findings be used for this settlement does not necessarily simplify things. Because the Allocator uses a different compaction ratio than the ratio contained in the MSW settlement policy, it is evident that application of the policy to the Allocator's numbers can achieve different results, depending on the method of "uncompacting"

¹ The Village, in its submissions to the Allocator argued that the Allocator should adopt the EPA's MSW Settlement Policy as a guide for determining the Village's liability. After reviewing the Allocator's report, it has become apparent that the Village's original figures were inaccurate because of an omission of certain loads that were recorded on the ledgers and a miscalculation of the packers' capacities. The Allocator also added 50 cyds. of roadside pickup loads to his final number based on some questionable recollections of a witness. For these reasons, the amounts sought in the Village's submissions and the Allocator's findings differ.

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the MSW. To illustrate this, I have gone to the trouble of doing the calculation under the policy using both methods with Lincoln Heights' numbers.

The Allocator found that 215 loads of compacted MSW was delivered to the Skinner Landfill by Lincoln Heights. The Allocator averaged out the Village's two packer trucks, a 14 yd truck and a 16 yd truck, determining the Village brought 15 cubic yards (cyds.) of MSW per load to the landfill. The Allocator then applied a 2:1 ratio to "uncompact" the MSW. Therefore:

$$3 \cancel{2} 15 \text{ loads} \times 15 \text{ cyds.} = \overset{4,725}{\cancel{3,225}} \text{ cyds. compacted} \times 2 = 9450 \text{ cyds. uncompacted.}$$

The Allocator then determined that the Village brought 50 cyds. of uncompacted waste to the landfill in the form of roadside debris. Therefore:

$$50 \text{ cyds.} + 9450 \text{ cyds.} = 9500 \text{ cyds. uncompacted.}$$

Under the EPA's MSW policy, uncompacted waste is converted to pounds by the conversion factor of 100lbs/ cu. yd. Therefore:

$$9500 \text{ cyds.} \times 100 = 950,000 \text{ lbs.}$$

The EPA MSW settlement policy suggests a settlement amount of \$5.30 per ton of MSW. Therefore:

$$950,000 \text{ lbs.} / 2000 (2000 \text{ lbs. in a ton}) = 475 \text{ tons} \times \$5.30 = \$2,517.50.$$

However, under the EPA's MSW settlement policy, a different ratio is applied to compacted waste. Under that policy, compacted waste is treated with a ratio of 600lbs/cu. yd. Therefore:

$$\overset{4,725}{\cancel{3,225}} \text{ cyds. compacted} \times 600 = \overset{2,835,000}{\cancel{1,935,000}} \text{ lbs.}$$

$$50 \text{ cyds. uncompacted} \times 100 = 5000 \text{ lbs.}$$

$$1,935,000 \text{ lbs.} + 5000 \text{ lbs.} = \overset{2,840,000}{\cancel{1,936,000}} \text{ lbs. total.}$$

$$\overset{\Delta}{\cancel{1,935,000}} \text{ lbs.} / 2000 = 967.5 \text{ tons} \times \$5.30 = \$5,127.75. \quad \boxed{7,526}$$

Therefore, applying the MSW settlement policy to the Allocator's numbers, we get either \$5,127.75 or \$2,517.50, depending on whether the EPA's or the Allocator's compaction conversion formula is used. The Village of Lincoln Heights obviously would prefer a lower number as a possible settlement number, but is willing to consider the higher number as a

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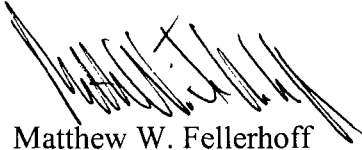
Sherry Estes
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Page 4

settlement figure, but requests that if it is used, the calculation method be likewise used for any other settlements under the policy.²

The Village believes that it has provided sufficient evidence to merit settlement under the policy. It is apparent from a review of the documents submitted that there is no evidence that the Village contributed anything by MSW to the landfill. There is mention of a small amount of "roadside debris" but the Village asserts that this is less likely to contain hazardous wastes than MSW. If for some reason there is a need for more information, the Village will do all it can to provide such information.

I believe that the Village of Lincoln Heights is a fine candidate for application of the EPA's MSW settlement policy. I can be reached at the above phone number and address if you have any comments or suggestions. Thank you for your consideration of this matter.

Sincerely,



Matthew W. Fellerhoff

cc: William A. Kohbarger
William A. McClain

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² The Village believes that it performed the calculations in accordance with the method described in the policy. If there is any confusion about how the Village performed these calculations, disagreement with the interpretation of the terms of the policy or the Allocator's numbers, the Village will be happy to discuss those issues.

VILLAGE OF LINCOLN HEIGHTS ("Lincoln Heights")

Lincoln Heights was incorporated in 1946. Its questionnaire response was based on a review of the nexus materials and interviews with current village employees; Mr. Guy Westmoreland, the former clerk/auditor of Lincoln Heights; Mr. William Boggs; and Mr. Leonard Lawson, a garbage truck driver and fire chief during 1967-68.

Lincoln Heights explained that, prior to 1960, it was not responsible for residential trash pickup in the City. Rather, individual residents contracted with private contractors. After it assumed waste collection responsibilities, Lincoln Heights delivered residential garbage primarily to a landfill in Morrow, Ohio, until at least the mid-seventies. During this time period, Lincoln Heights used Village employees to perform residential trash pickup and deliver it to a landfill. Occasionally this waste was taken to the Skinner Site when the waste collection truck was filled early in the day, necessitating two disposal trips. Since the Skinner Site was closer to the route, it was easier to dispose of the first load there before beginning collection of the second load. According to Mr. Lawson, the Village never used the Skinner Landfill more than once a day and the second load on such a day was brought to the Morrow landfill.

The Village employees collected residential garbage daily. In addition to pick-ups from residences, Lincoln Heights said that trash was also picked up at small grocery stores in the city. Trash pickup by Lincoln Heights was funded by a tax levy paid by citizens of Lincoln Heights. Commercial establishments were required to contract with third parties for their own pickup. Lincoln Heights asserted that no commercial waste was generated or transported by it.

According to various individuals interviewed, at some point in time in the 1970s the Village began dumping its residential trash at the Rumpke landfill. Also, there is some documentary evidence which indicates that the Village, for a short time, dumped its garbage at the Clark incinerator.

In 1982, Lincoln Heights granted an exclusive contract to Jennings Drayage, Inc. to pick up the trash at residences. Lincoln Heights did not employ any transporters identified in Exhibit A prior to 1983. In 1983, the Village sold its equipment, downsized its work force and contracted with Rumpke for residential trash pickup and disposal services. Lincoln Heights assumed that such disposal was made at Rumpke's own landfill. No specific records were maintained regarding Rumpke. In 1983, Lincoln Heights contracted with Rumpke to pick up the trash. This relationship continued up and through 1990.

Lincoln Heights did not operate a sewer or waste water treatment plant. This is contrary to testimony in the administrative depositions of Ray Skinner and Roger Ludwig that lime from Lincoln Heights' water treatment plant was dumped at the Skinner Landfill. While there were two water treatment plants within Lincoln Heights, they were not owned by Lincoln Heights. The Southwestern Water Works operated a water treatment plant at the corner of Lindy Avenue and Mangham Drive. The Village of Lockland had a reservoir at the corner of Adams Street and Carey Street.

The Skinner log contained entries of disposal two or three times a week in November of 1967 but those entries were not complete. Mr. Lawson drove Lincoln Heights' garbage truck from 1960 through 1967. Mr. Lawson stated that Skinner was used by Lincoln Heights at most three times a week. He remembered using the Morrow Landfill exclusively, except as noted above. Upon further questioning, he indicated that Lincoln Heights used the Clark incinerator a few times over the entire period on an "emergency basis."

The total weight or volume of waste deposited at the Site was not calculated by Lincoln Heights. Lincoln Heights had only two garbage trucks at any one time, I was advised, which were used to deliver waste to the Site. Lincoln Heights did not know the capacity of the garbage trucks. An invoice in the nexus package reflected the per unit price paid by Lincoln Heights was \$7.00 a load.

Lincoln Heights found no relevant records. All documents that were in existence were destroyed by action of the Village Records Commission under Ohio law. Lincoln Heights noted that it did locate a resolution which stated, "Whereas, current disposition of waste materials is being done on a month-to-month basis, without contract according to law and good business practice,..." which, I am told, indicated that Lincoln Heights did not have a formal contract with Skinner.

Skinner Log. The Skinner log entries for Lincoln Heights are shown in the table below. They total \$2,205.00. At a charge of \$7 per load based on an invoice from the Landfill charging \$7, the number of loads represented by these dollars is 315 loads.

<i>Recorded Payment Date</i>	<i>Amount</i>	<i>Divisor</i>	<i>Loads</i>
01/03/67	\$182.00	7	26
03/14/67	\$206.50	7	29.5
03/22/67	\$182.00	7	26
04/12/67	\$108.50	7	15.5
05/17/67	\$98.00	7	14
06/22/67	\$154.00	7	22
07/17/67	\$182.00	7	26
08/10/67	\$126.00	7	18
09/21/67	\$119.00	7	17
10/27/67	\$126.00	7	18
11/09/67	\$119.00	7	17
12/13/67	\$147.00	7	21
01/20/68	\$322.00	7	46

<i>Date (all in 1967)</i>	<i>Loads</i>	<i>Amount Due</i>
TOTAL	17 loads	\$119

The pricing pattern is consistent with a charge of \$7 throughout the time period reflected in the Skinner log.

Packer Capacities. Lincoln Heights explained in its position paper that it operated one 16-yard packer and one 14-yard packer (Position Paper, p. 3)

Site Witnesses. I accept Lincoln Heights' representation that it did not operate a water treatment plant. I assume that the testimony of Ray Skinner and Roger Ludwig related to either the Village of Lockland or the Southwestern Water Works, both of which owned water treatment plants within the boundaries of Lincoln Heights.

Charles Ringel recalled seeing Lincoln Heights' trucks at the Skinner Landfill. He recalled what he thought was a 20 cy compactor vehicle. He said that he remembered seeing Lincoln Heights' vehicles in the Landfill the whole time that he was taking waste to the Landfill. He explained that the Skinner Landfill was closer to Lincoln Heights than the Morrow landfill and recalled that Lincoln Heights used a landfill in Morrow, then moved to the Skinner Landfill, and then moved back to Morrow. C. Ringel Depo., p. 78-80.

Ray Skinner recalled Lincoln Heights as a user of the Landfill with compactor vehicles before he went into the military (around 1967). He also said that Lincoln Heights came in with an open top truck on occasion over the years bringing in roadside debris. He estimated the capacity of the compactors at 12 cys. R. Skinner Depo., p. 266-69.

Lincoln Heights' Position Paper. Joining the chorus of other ADR participants, Lincoln Heights seeks a zero allocation, saying that its wastes contained no hazardous substances. That argument is not persuasive.

Alternatively, Lincoln Heights argues that it should be assigned no more than 819 tons of waste or no more than about 2,700 compacted cys of solid waste. It has alternative arguments (based on higher prices per load than is reflected in the documents) that reduce this amount by one-half. It argues further that, in relative terms, the toxicity of its waste was much less than that of large manufacturing operations, and certainly less than that associated with Chem-Dyne transshipped waste. Using EPA's Municipal Settlement document, Lincoln Heights believes it should be charged no more than \$4,340.70. Finally, Lincoln Heights argues that when it used the Skinner Landfill it was a "city" under Ohio law. Today, however, it is a "village" because its population is below 5,000 persons. It explained that it receives its income from a small taxpayer base, and does not have large cash reserves. "Ability to pay should be a serious consideration in any allocation and necessarily will become an issue for the Village in any potential settlement talks," Lincoln Heights concluded. Lincoln Heights did not comment on its insurance coverages in 1967 or 1968.

Waste-in Amount. I have decided to use the average of the two packers (15 cy) as the capacity factor in the waste-in amount analysis. I have also decided to use the



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COUNSEL
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GEORGE F. MOELLER

October 9, 1997

John M. Barkett
Allocator
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Via UPS Next Day Air

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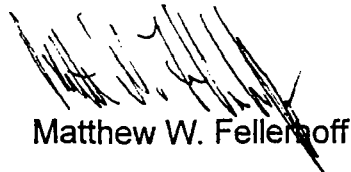
Via Regular U.S. Mail

Re: Skinner Landfill ADR Questionnaire

Dear Mr. Barkett and Mr. Hillman:

Please find enclosed a copy of the Village of Lincoln Heights responses to Skinner Landfill ADR Allocation Questionnaire.

Sincerely,



Matthew W. Fellerhoff

enclosure

cc: Rumpke
c/o William A. Posey, Esq.

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**VILLAGE OF LINCOLN HEIGHTS' RESPONSES
TO SKINNER LANDFILL ADR ALLOCATION QUESTIONNAIRE**

QUESTIONS DIRECTED TO MUNICIPALITIES

12. Conduct a "full and thorough" investigation as defined above of your transport or disposal, or arrangement for transport or disposal, of material from within the boundaries of your municipality and answer the following questions based on your investigation and review of the materials in the nexus packages previously sent to you. If you transported or arranged for the transport or disposal of any material from within the boundaries of your municipality that you know or have reason to believe was or may have been sent, directly or indirectly, to the Site, provide:

- a. the name and address of each person or entity that transported or arranged for the transport or disposal of such materials from within your boundaries

During the relevant time period (1967-1968), the Village used Village employees to perform residential trash pickup and deliver it to the Skinner Landfill. The Village is only aware of one such employee who is currently living. This individual is Mr. William Boggs of 1312 Schumard, Cincinnati, Ohio 45215. Mr. Boggs, though he drove a garbage truck for Lincoln Heights during the relevant time period, has no memory of the Skinner Landfill site.

- b. the time period(s) during which each person or entity transported or arranged for the transport or disposal of such materials from within your boundaries

During the year of 1967 through February of 1968.

- c. for each such person or entity identified, the source(s) of the information for your response to this question

This information was obtained by a review of the nexus materials, and interviews with current village employees, Mr. Guy Westmoreland, the former clerk/ auditor of the Village of Lincoln Heights, and Mr. William Boggs.

13. For each and every transporter and each and every time period identified in response to question #12, describe separately:

- a. the type(s) of transported material by physical nature (e.g., solid, liquid, or sludge) and as precise a description of the chemical constituents as possible

The material transported was municipal residential trash. The exact makeup of this material is unknown.

- b. the process which generated each such material

The material was generated by Village employees' pickup of village residential trash.

- c. the frequency with which each such material was transported

The only specific evidence of when the transportation occurred is contained in the nexus package. According to the one invoice contained in the nexus package(SD0010159, EPAF 13470), the material was transported two or three times a week in November of 1967.

- d. the total amount (weight and volume) of each such material that was transported

The total weight and volume is unknown. The Village had only two garbage trucks at any one time.

- e. the form in which each such material was picked up or removed (e.g., containers, bulk, sludge, drums, etc.)

The material was delivered in Village garbage trucks.

- f. the number and capacity of any trucks used to transport each such material

The Village used two garbage trucks of unknown capacity.

- g. the transportation and disposal price per paid unit (e.g., drum, gallon, cubic yard, ton, pound, etc.) of each material sent

According to the invoice contained in the nexus package (SD0010159, EPAF 13470), the per unit price was \$7.00 a load.

- h. the source(s) of the information for your response to question #13

Conversations with Mr. Guy Westmoreland, Mr. William Boggs and the above-referenced Skinner Ledgers.

14. Determine whether you arranged with any of the transporters identified in Exhibit A for the transport or disposal of any material from within the boundaries of your municipality. If so, for each such transporter, provide:

- a. the time period(s) during which each transporter transported or provided for the transport of materials from within your boundaries
- b. for each and every transporter and each and every time period identified for that transporter, provide a separate response to question #13(a)-(h)

The Village did not employ any of these transporters prior to 1983. In 1983, the Village sold its equipment, downsized its workforce and contracted with Rumpke for residential trash pickup and disposal services. The Village assumes that such disposal was made at Rumpke's own landfill. The Village does not maintain any specific records regarding Rumpke's activities and therefore any response with regard to question 13(a)-(h) would necessarily be covered by Rumpke's response.

15. For each and every time period which you identified in response to questions #12 and 14, state whether materials were collected by your municipality for transport or whether you arranged for the collection and transport of materials from commercial establishments occupying over 20,000 square feet of space and/or from industrial establishments. If so, identify each such establishment, provide the dates during which material was collected, and describe as precisely as possible the type and approximate amount of material collected from each such establishment.

Trash pickup was funded by a tax levy paid by citizens of the Lincoln Heights. Such commercial establishments were required to contract with third parties for their own pickup.

16. If you know or have reason to believe that you transported or arranged for the transport or disposal of material from within the boundaries of your municipality at locations other than the Site, provide a detailed explanation of:

- a. the basis for that knowledge or belief
- b. the time periods during which and materials from which such other locations were used
- c. the persons or entities who transported or provided for the transport of materials to those other locations

If you desire, information regarding the identity of other disposal sites you used may be submitted to the Allocator in a separate envelope marked as "confidential"; confidential information provided to the Allocator will be given to the Allocator only and will not be shared with other participating parties.

The Village has no knowledge that it transported material to any other site during the relevant time period. The Village does not currently possess any records regarding these matters. Before and after 1967 and 1968, the Village transported its residential trash to other landfills in the vicinity. Since there are no records or even a formal contract with Skinner or any other landfill, it cannot prove or disprove whether it transported its trash to another landfill at the same time.

17. Did you have any sewage or other wastewater treatment plants within the boundaries of your municipality during the relevant time period? If so, for each such plant (i) from which sludge was disposed at the Site, (ii) from which sludge was accepted by a transporter identified in response to question #14 and for which sludge you did not identify a disposal location other than the Site in response to question #16, or (iii) for which you do not know the disposal location, provide:

- a. the name and address of each such plant and the time period during which the plant operated
- b. the amount of sludge by gallon or cubic yard generated per year
- c. the transporter of the sludge
- d. the time period(s) during which sludge was disposed at the Site, accepted by a transporter identified in response to question #14 for which you did not identify a disposal location other than the Site in response to question #16, or for which you do not know the disposal location
- e. the identity of major commercial and/or industrial sources of sewage or other wastewater to the plant
- f. the source(s) of the information for your response to question #17(a)-(e)
- g. all documents reflecting sludge analysis reports during all time periods identified

The Village contained no sewage or wastewater treatment plants.

18. Provide copies of any and all documents reflecting, referring or relating in any way to the transport or arrangement for transport, or disposal or arrangement for disposal, of material from within the boundaries of your municipality identified in response to questions 12, 14 and 17, including but not limited to, all agreements or contracts with transporters or arrangers for transport, correspondence with transporters, arrangers for transport, or the owners or operators of the Site, billing or payment records, and internal communication.

No such documents exist. All documents that were in existence were destroyed by action of the Village Records Commission in cooperation with the Ohio Historical Society as is required by Ohio law. Further, a later passed resolution (Resolution No. 69 - 33, attached), states "Whereas, current disposition of waste materials is being done on a month-to-month basis, without contract according to law and good business practice...." It is apparent that the Village likely did not have a formal contract explaining the terms of the Village's arrangement with Skinner.

19. Provide copies of all documents relating to public meetings at which your municipality's material transport or disposal practices during the relevant time period were discussed. Those documents that solely reference disposal locations other than the Site or transporters other than those identified in Exhibit A need not be provided.

Attached are all documents that could be located. The minutes attached only represent minutes from September 1967 through 1968. The Village has been unable to locate minutes pertaining to the years 1962 through September of 1967.

20. Identify all present or former municipal officials and supervisory employees that you know or have reason to believe have, or are likely to have, knowledge of the transportation or disposal by you of materials from within the boundaries of your municipality, or of the hiring by your municipality of material transportation or disposal entities at any time during the relevant time period.

Mr. Guy Westmoreland, former clerk auditor for Lincoln Heights.

Mr. William Boggs, former garbage truck driver during relevant time period.

GENERAL QUESTIONS DIRECTED TO ALL PARTICIPANTS

27. Explain the steps taken to perform a full and thorough investigation of the questions set forth above. Identify:

- a. all persons interviewed who have relevant information who were consulted in the preparation of answers to these questions;

Mr. Guy Westmoreland, former clerk auditor for Lincoln Heights

Ms. Evie Caver, Account Clerk for Lincoln Heights

Ms. Elizabeth Smith, current Clerk of Council

Mr. William Kohbarger, current Village Administrator

Mr. William Franklin, former Village Administrator

Mr. William Boggs, former garbage truck driver during relevant time period.

- b. all persons, who, based on your investigation, may have relevant information but who were not interviewed and the reason why no interview was conducted; and

Unknown.

- c. all documents which may be relevant but which were not reviewed and the reason that the documents were not reviewed.

Unknown.

28. If you desire to, describe any factual and legal defenses to liability that you may have.

Initially, the plaintiffs' Section 107 claim fails. As a PRPs, the Plaintiffs cannot sue other PRPs under Section 107 and further any such Section 107 claim has been superseded by Section 113. Any common law claims are preempted by CERCLA. If any claim by these plaintiffs against the Village of Lincoln Heights is valid, it is the Section 113 claim. The Village of Lincoln Heights reserves the right to raise any additional defenses in the future.

With regard to the facts indicating Lincoln Heights' involvement with the Site, it is evident that Lincoln Heights' involvement was minimal. Lincoln Heights apparently only used the site for slightly over one year. The only material deposited by the Village at the site was household trash. No commercial waste

was generated or transported by Lincoln Heights. Further, there is no direct evidence that any hazardous wastes were actually placed in the Landfill as a result of Lincoln Heights' actions.

29. If you desire to, describe any theories or ideas that you would suggest regarding the criteria for the allocation.

There is no direct evidence that Lincoln Heights deposited any hazardous wastes in the Skinner Landfill. Therefore, Lincoln Heights should be found to have a zero share.

Even if it is shown that the Village was responsible for hazardous wastes, considering the contributions of other parties involved in this suit, the Village certainly has contributed much less than one percent of the hazardous wastes at the site. As such, and considering the equities involved, the Village is plainly a *de minimis* PRP and should be allocated a zero or *de minimis* share.

30. Identify any persons who did not receive this questionnaire whom you believe should be identified as persons who should be allocated some share of responsibility for response costs incurred at the Site. (Exhibit B is a list of the persons receiving this questionnaire.) Describe as completely as possible the basis for any such belief and provide copies of all documents relevant to that position.

Unknown.

31. Provide any other information which you believe is relevant to the allocation which has not been given in response to the previous questions.

Unknown.

32. Identify a contact person(s) who can respond to questions or provide clarification with regard to your responses.

**Matthew W. Fellerhoff
Manley, Burke, Lipton & Cook
225 W. Court St.
Cincinnati, Ohio 45202**

(513) 721- 5525

CERTIFICATION

On behalf of Marvin the Village of Lincoln Heights (the "Participant") I hereby certify that the Participant has conducted a full and thorough investigation to acquire all information necessary to respond to the foregoing questions and that the answers to all of the foregoing questions are given in good faith and are truthful, accurate, and complete to the best of my knowledge and belief. I further certify that to the best of my knowledge and belief, the Participant has not withheld any information which might contradict or cast significant doubt upon the foregoing answers. I further certify that if the Participant becomes aware of any information or documents that indicate that a response to this questionnaire was incomplete or incorrect at any time during the allocation process, the Participant will supplement its initial response to reflect the additional documents or information of which the Participant subsequently becomes aware. Finally, I certify that I am authorized to sign this Certification on the Participant's behalf.

[Signature]
Name

Attorney
Title

Oct 9, 1997
Date

RESOLUTION NO. 69- 33

AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ADVERTISE FOR BIDS, TO PROVIDE THE USE OF A DISPOSAL SITE FOR THE CITY'S GARBAGE, AND WASTE DISPOSAL VEHICLES.

Whereas this council has determined the necessity of providing the City of Lincoln Heights the use of a waste disposal site, and


Whereas, current disposition of waste materials is being done on a month to month basis, without contract according to law and good business practice, therefore


Be it Resolved by the Council of the City of Lincoln Heights, Ohio

Section 1. The Director of Public Service is hereby authorized and directed to advertise for bids, to enable the City of Lincoln Heights to provide by contract the use of a waste disposal site, or facility by City operated vehicles.

Section 2. That no contract shall be executed for said service until approval shall be made by this council.

PASSED: December 1, 1969


President of Council

Attest: 
Clerk of Council

RECORD OF PROCEEDINGS

Minutes of

THE LINCOLN HEIGHTS CITY COUNCIL

Meeting

Held

Special Session

December 14, 1967

The Lincoln Heights City Council was called in special session on the 14th day of December, 1967. President of Council, Randall B. Moss, presided.

A call of roll of members was held with the following members responding: John Armstrong, Sylvester Kilgore, Oliver Lackey, Harvey Matthews, and Walter J. Smith. Absent Members were Charlie Southall and Alphonso Williams.

Purpose of the meeting: To make emergency disposition on a garbage truck, and attend to any other immediate business at hand.

BIDS ON GARBAGE TRUCK: Two bids were received by the Safety Director on used garbage trucks December 9, 1967. Bids were submitted by Ohio Trucking Co. and Road Machinery Company.

Discussion was held on the renting of a garbage truck from Richmond Disposal Service, Hamilton, Ohio at \$100.00 per week for four to five weeks until the old garbage truck is put in condition.

A motion to rent the garbage truck from the Richmond Disposal Company under said conditions was made by Member Smith and seconded by Member Armstrong. Members Armstrong, Kilgore, Lackey, Matthews, and Smith each voted yea on the motion. The motion was carried. The proposal to rent the truck was accepted.

DISCUSSED NEW GARBAGE TRUCK:

Mr. Combs, Safety Director, read specifications previously prepared on a 1967 garbage truck while members compared same with written specifications furnished by the Ohio Trucking Company. Council talked of old packer body to a new cab and chassis. Members agreed to accept the quotation of Fuller Ford for a new cab and chassis to be transferred to the old packer(GMC).

A motion to purchase a new cab and chassis from Fuller Ford and transfer same to the old GMC Packer was made by Member Walter Smith. Member Kilgore seconded the motion. 5 members present, Armstrong, Kilgore, Lackey, Matthews, and Smith each voted yea on the motion. The motion was carried.

HEALTH CONTRACT FOR 1968.

The Health Contract for 1968 between Lincoln Heights and Hamilton County for health services for 1968 was brought out the committee and again presented to Council. The 1968 health fee is \$2,107.52, about \$600.00 increase over the 1967 contract. Council made the following disposition of same.

A motion to receive the Health Contract for 1968 and to empower the Mayor to enter into the contract with the Hamilton Health Department for the same was made by Member Walter J. Smith. Member John Armstrong seconded the motion. Five members present and each, Armstrong, Kilgore, Lackey, Matthews, and Smith voted yea on the motion. The motion was carried. The contract was accepted and duly processed.

Due to the Comprehensive Planning still underway and not completed, Council decided to continue the restriction on building and/or remodeling permits in the City. The following resolution was then presented and read in its entirety:

RESOLUTION NO. 13, 1967

A RESOLUTION TO SUSPEND THE ISSUANCE OF PERMITS FOR CONSTRUCTION OR REMODELING OF BUILDINGS IN ALL AREAS EXCEPT R-A-1 ZONE IN THE CITY OF LINCOLN HEIGHTS, HAMILTON COUNTY, OHIO, FROM DECEMBER 14, 1967 to MARCH 14, 1968.

A motion to receive the above resolution and for the adoption of same was made by Member Walter J. Smith and seconded by Member John Armstrong. Five members present, Armstrong, Kilgore, Lackey, Matthews, and Smith, and each voted yea on the motion. The motion was carried. Resolution No. 13, 1967 was declared duly adopted.

The following ordinance was presented and read in its entirety to Council:

ORDINANCE NO. 13, 1967

AN ORDINANCE ESTABLISHING SALARIES FOR ELECTED OFFICIERS OF THE CITY OF LINCOLN HEIGHTS, OHIO, REPEALING PROVISIONS OF PRIOR ORDINANCES IN CONFLICT HERewith, AND DECLARING AN EMERGENCY.

The said ordinance was received and passed as follows: Since the salary ordinance contained an emergency clause the rules of procedure were suspended governing the passage of a measure of this kind so that the ordinance can be passed

RECORD OF PROCEEDINGS

Minutes of

THE LINCOLN HEIGHTS CITY COUNCIL

Meeting

Held Last Session, 1967

December 18, 1967

The Lincoln Heights City Council met in its last regular session of 1967, December 18, 1967, in the Council Chamber. Randall B. Moss, President of Council, presided. The meeting was opened with a moment of silent prayer.

The roll call was held with the following members responding: John Armstrong, Sylvester Kilgore, Oliver Lackey, Harvey Matthews, Walter J. Smith, Charlie Southall, and Alphonso Williams. All seven members present.

Minutes were read of the last regular session of Council held December 4, and minutes of a special meeting held December 14, 1967.

A motion to receive and adopt minutes of both meetings as read was made by Member Lackey. Member Matthews seconded the motion. All seven members voted yea. The minutes of both sessions were declared received and adopted.

OLD BUSINESS:

Report of truck rental from Richmond Brothers Disposal Service proved unsatisfactory and the truck was turned to the owner. That another truck for rent is to come in from Dayton.

Reported that the \$5.00 auto tag fee proposal is dead. That County Commissioners failed to act on same.

WASTE COLLECTION COMMITTEE:

The Waste Collection Committee asked that Council consider the following: 1. Council consider one pick up a week. 2. Consider new garbage truck and cab and chassis for GMC and dispose of the old Chevrolet truck. 3. Leaflets of instructions governing waste collection and trash collection be circulated. 4. Require two cans for separation of garbage. 5. Garbage dumping to be at a nearer place. 6. Care for equipment. 7. Safety Director make report to Council each month. Thus ended the report.

A motion to receive the report of the Waste Collection Committee was made by Member Southall and seconded by Member Lackey. Each member approved the motion. The report was declared received.

COMMUNICATION from the Youth Director of Neighborhood Services asking for \$250.00 to be donated by the City for banquet for youths who have participated in recreational activities during the year.

Auditor Westmoreland said that the City should not become involved in this matter, that public funds are to be spent in certain ways. This communication was turned over to the proper committees.

RANDALL B. MOSS, outgoing president of Council at the end of 1967, wished the new members success

Mayor Love's last gesture was the awarding of meritorious awards to all City employees serving under his administration.

The newly elected Mayor, PENN W. ZEIGLER, made remarks.

Alice V. Sanderfield, outgoing Treasurer thanked Council for cooperating with her in the work.

Alphonso Williams spoke encouraging words to the newly elected officials. Williams was bowing out also.

There being no further business before Council. a motion to adjourn was made by Member Oliver Lackey. Member Armstrong seconded the motion. Each member approved. Council was declared adjourned.

Rosa M. Blair

RECORD OF PROCEEDINGS

11

Minutes of

THE LINCOLN HEIGHTS CITY COUNCIL

Meeting

10-52-15 THE COL. B. B. MFG. CO.

1087

Held Regular Session

January 15,

19 68

Lincoln Heights City Council met in regular session on the 15th day of January 1968, with John Armstrong, Pres. pro-tem presiding. The meeting was opened with a moment of silence. The call of the roll was held with the following members responding: John Armstrong, George Ellis, Sylvester Kilgore, Oliver Lackey, Harvey Matthews, Charlie Southall, and Vernon Woolfork.

Minutes of previous meetings of Council held December 18, 1967, January 1, 1968, and January 10, 1968 were read. A motion was made by Member Lackey and seconded by Member Southall to receive and adopt minutes of the three meetings with necessary corrections. All members present and each approved the motion. The motion was carried. The minutes was declared adopted.

The Chairman of the Law Committee presented the following ordinance amending the ordinance governing the demolition of dangerous structures in the City:

AN ORDINANCE GOVERNING THE DEMOLITION OF DANGEROUS STRUCTURES FOR THE CITY OF LINCOLN HEIGHTS, OHIO, AND DECLARING AN EMERGENCY.

The Section (6) was written to read thus: "That City Council shall create a hearing board consisting of three (3) members who shall be appointed by the Mayor and they shall be empowered to conduct hearings, upon proper notice to affected owners....."

A motion to suspend the rules of procedure governing the passage of an ordinance or resolution and pass the said ordinance as an emergency was made by Member Southall and seconded by Member Ellis. All members present and each voting member voted yea on the motion. The motion was carried.

A motion was made by Mem. Southall and seconded by Member Ellis to receive and adopt the first reading of the said ordinance. Each member voting yea on the motion. The motion was carried. The first reading was declared adopted.

Then the said ordinance was read twice by title. A motion to adopt the second and third reading of the said ordinance was made by Mem. Lackey, seconded by Member Southall. Each member voting approval on the motion. The motion was carried. The ordinance was declared adopted.

ATTORNEY DARDEN:

Mr. Southall reported to Council that Attorney George Darden who had aided the Mayor in Court Friday January 12, 1968, asked for a fee of \$25.00 for that night. A motion to pay Att. Darden the said amount was made by Mem. Southall and seconded by Mem. Woolfork. Members Ellis, Kilgore, Lackey, Matthews, Southall, and Woolfork voted yea on the motion. The motion was carried.

REPORT OF COMMITTEES:

SAFETY COMMITTEE- Mem. Kilgore, Chr.- reported of a meeting with Safety Director, George Brown, talked of Civil Service laws, and what to do to upgrade the Police and Fire Department. Also committee secured material from Ohio Road Machinery Company for Council to review on garbage truck.

URBAN RENEWAL COMMITTEE:- Mem. Lackey, Chr.- Reported that representatives from Lincoln Heights went to Washington on our Comprehensive Planning. They will make reports of the trip.

WASTE COLLECTION COMM.- J. Armstrong, Chr.- Committee still is working on regulations for the garbage collection and will complete report soon.

LAW COMMITTEE;- C. Southall, Chr.- Reported that Committee will have a report on Legal Counsel for the City as soon as contacts are finished.

MAYOR'S ORAL REPORT: Mayor Zeigler said that he talked with Attorney Neman on the truck situation on Shepherd Lane. That he hopes to settle the truck situation out of court. That he (Mayor) is asking the Trucking Companies to use the access road around Lincoln Heights and avoid using Shepherd Lane. And he is working on the continuation of an access road extended from Shepherd Lane and skirting the railroad on the west side of Lincoln Heights on out to Marion Road in Woodlawn.

Mayor made a report of trip to Washington of the Mayor, Walter Smith, and Auditor Westmoreland, and Charles Ball, the Planner. They visited the office of HUD and was interviewed by Mr. Hummell, Asst. to Mr. Weaver.

RECORD OF PROCEEDINGS

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Minutes of

THE LINCOLN HEIGHTS CITY COUNCIL

Meeting

Held..... Regular Session February 5, 19 68

City Council met in regular session on the 5th day of February, 1968 in the Council Chamber. Walter J. Smith, President of Council, presided. The following Council members responded to (teh roll Call: John Armstrong, George T. Ellis, Oliver Lackey, Harvey Matthews, Charlie Southall, and Vernon W. Woolfork. Councilman Kilgore entered during the reading of the minutes. Therefore all seven members were present.

Minutes of the last meeting of Council were read: (Dated January 15, 1968) There being no corrections on the minutes, a motion was made by O. Lackey and a second to the motion by J. Armstrong, to receive and adopt minutes as read. Each member voted yea on the motion. The motion was carried. The minutes were declared adopted.

AUDITOR'S REPORT: Auditor Westmoreland called Council's attention to an error of \$30.00 in the General Fund receipts for 1967, and asked the members to add the amount to General Fund Receipts on the reports that were distributed in the previous meeting.

Mr. Westmoreland asked that Council pass the appropriations ordinance in this meeting because it is necessary for him to have said material to file with the County Auditor.

COMMITTEES' REPORTS

Legal Committee- Harvey Matthews, Chr.- said that he had contacted Attorney Albert Neman concerning the Truck traffic on Shepherd Lane. That Att. Neman said that he is making contacts on same and would have an answer by February 9th.

Walter Smith, President of Council, said that the two attorneys can work together on many items.

A motion to receive the report of the Law Committee was made by Oliver Lackey, seconded by John Armstrong, and approved by each member. The report was declared received.

Waste Collection Committee--John Armstrong, Chr.--said that his committee will get with the Service Director on regulations governing Waste Collection.

Mayor Zeigler explained that the Ohio Trucking Company broke their contract by not keeping their word on the time that the old truck would be readied. They were to put new cab and chassis on old packer. The rental truck broke down. That we changed rental of truck to the Road Machinery Company at Dayton, Ohio. The rent on the used truck to be applied towards the purchase of a new truck.

A motion to receive the report of the Mayor and Waste Collection Committee was made by Mr. Lackey and seconded by Harvey Matthews. Each member approved. The report was declared received.

SAFETY COMMITTEE: Mr. Kilgore, Chr. stated that he studied the Civil Service Laws and found that the Commission has the right to open exams to applicants outside of Lincoln Heights, if they are accepted given time to move into the city. Will have report on the Fire Department by next meeting.

U.R.
Grants
approved

URBAN RENEWAL COMMITTEE: Mayor Zeigler made report the committee. He stated that he had just received word from Senator Luasche's office today February 5, 1968. Grants for Lincoln Heights have been approved in Washington. That we will make application for the Model Cities Program now. This present Grant was a federal advance of \$72,775.00 for the GNRP Program, \$134,321.00 for the Grant Street Project, and the overall Urban Renewal Program \$1,143,000.00. Mayor made plea of unity in the community. That we must be of one accord if we are to accomplish our goals.

A motion to receive the Mayor's and Urban Renewal report was made by Member Ellis and seconded by Member Ellis. Each member approved the motion. The motion was carried.

During a recess of Council, Mr. Charles Redmon asked that restrictions on building and remodeling permits be lifted so that he might be able to repair his place of business before he loses his insurance on same. Mr. Redmon was told to meet the Planning Commission on this matter. That are exceptions in the restrictions.

RECORD OF PROCEEDINGS

Minutes of

THE LINCOLN HEIGHTS CITY COUNCIL

Meeting

Held (Postponed regular session)

February 20, 1968

The Lincoln Heights City Council met in session on the 20th day of February 1968, 8:10 P.M., in the Council Chamber. President of Council, Walter J. Smith, presided. The meeting was opened with a moment of silent prayer. A roll call of members was held with the following members responding: John Armstrong, George T. Ellis, Oliver Lackey, Harvey Matthews, and Vernon Wolfork; absent members: Sylvester Kilgore and Charlie Southall.

Minutes of the previous two meetings, regular session held February 5th, and special session held February 7, 1968. There being no corrections on the minutes, a motion to receive and adopt both sessions of minutes as read was made by Member Wolfork and seconded by Member Oliver Lackey. A call of the roll was held on the motion with the following response: Members Armstrong, Ellis, Lackey, Matthews, and Wolfork each voted yea. Five voted yea, the motion was carried. The minutes were declared adopted.

COMMITTEE REPORTS

Urban Renewal: Oliver Lackey, Chr.

Mr. Lackey made mention of the Citizens' Participation Committee and all interested citizens met at the High School February 19, 1968 to hear the reports of the City Planners and other representatives of the Urban Renewal projects. That the meeting was well attended-approximately 350 to 400 citizens present. Mr. Lackey said that at this time there is no definite report to be made on Urban Renewal plans. Report would be made at a later date.

A motion to receive the report of the Committee was made by Armstrong, and seconded by Matthews. Each member approved the motion. The report was declared received.

Waste Collection & Recreation Committee: John Armstrong, Chr.

Mr. Armstrong said that the committee wants Council to approve the regulations of garbage pick-up set forth by the committee. That the Service Director has been given the regulations. The Service Director will talk with businesses about dumpsters to aid in garbage collection.

A motion to receive the report of said committee was made by Wolfork and seconded by Armstrong. Each member present approved the motion. The report was declared received.

Legal Committee: Harvey Matthews, Chr.

Mr. Matthews said that an ordinance governing legal counsel for the City is being prepared. That he would like to hold it until the next meeting. That Attorney Albert Neman hopes to give a report on whether the City will have to go to court on the truck traffic on Shepherd Lane, by February 24th.

A motion to receive the report of the Legal Committee was made by Lackey and seconded by Ellis. Each member present voted yea on the motion. The report was declared received.

Safety Committee; Sylvester Kilgore, Chr.

In the absence of the chairman, Safety Director Brown reported that he had written to the Safety Department at Columbus to get information concerning the Fire Department which was sent to Lincoln Heights in a previous report. That Safety Director along with the Safety Committee is doing work on the revamping of the Police Department. That he is seeking aid on an ordinance establishing officers of the Fire Department. That the Legal Counselor is working with him on same.

A motion to receive the report of the Legal Committee was made by Member Lackey and seconded by Ellis. Each member present approved the motion. The said report was declared received.

Mayor Zeigler entered Council and presented Mr. George Graff, Assistant Regional Administrator for Renewal Assistance, Chicago Regional Office. Mr. Graff said that he will be working closely with us to take us step by step in our program. That he will try to speed up all papers from Chicago.

Mayor Zeigler said he is setting up series of conferences to set foot work for the Urban Renewal Program. That plans are being formulated for young people to help in the clean up of city and the tearing down of old structures. And for setting up of play grounds for the children.

Mayor Zeigler promised to have names of the Hearing Board on Demolitions soon.

RECORD OF PROCEEDINGS

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Minutes of

THE LINCOLN HEIGHTS CITY COUNCIL

Meeting

Held April 1, 1968

initiate an application for Model Cities Program.

Question was asked the Mayor about the delivery of the new garbage truck. An answer was given that the new truck was being mounted in Wisconsin and delivery can be expected in another week or two.

The Mayor answered Member Lackey's question concerning building a second story on present City building to provide additional office space. Mayor said that a new City Hall is being planned for the future, and also that a two story building in this section would be out of taste with other structures.

President of Council asked that in any addition to City Hall that an office will be set aside for Council to have private committee meetings.

A motion to receive the report of the Mayor, and of the Waste Collection Committee was made by Member Lackey and seconded by Member Matthews. Each member present approved the motion. The motion was carried.

OPEN MEETING TO VISITORS

A motion to suspend the rules of procedure and open the meeting to visitors was made by Member Armstrong and seconded by Member Wolfork. Each member voted yea. Rules were suspended.

REV. I. V. KEELY, spoke of dissatisfaction with Council not being able to complete the establishing of the Deterrent Squad. Rev. Keely said that the Squad will work in peace time as well as riot time, where police work is limited. That the Squad will act as big brothers to boys and juveniles, that they have a list now to turn over to the Police. That the squad wants immediate action from Council.

President of Council said that Council will act as soon as possible, not for what is happening now but for time to come to aid in the protection of our citizens. That Council wants legal guidelines for the protection of the men serving in the squad.

Mr. Keely said that the Squad meets on Tuesday nights at 7:30, and asked that other Council members visit the meetings.

Council again assumed its session. There being no further business before Council, a motion to adjourn was made by Member Armstrong, seconded by Member Wolfork. Each member present voted yea. Council was declared adjourned.

Nora M. Blair
Clerk of Council

RECORD OF PROCEEDINGS

Minutes of

LINCOLN HEIGHTS CITY COUNCIL

Meeting

Held..... October 7, 1968 19.....

Continuation of Mr. Lackey's report:

Mr. Lackey said that he has been talking with Mr. Mims concerning street work and that Mr. Mims is getting the street equipment cleaned up and repaired.

Mr. Lackey said that he had letter from Engineers on survey made of sewer problems in Lincoln Heights which should be sent to the Sewer District No. 1 with ordinance passed.

President of Council asked Mr. Lackey to get full report from Vogt-Ivers engineers to send with the Ordinance on the new Sewer District. Thus ended the report of the Urban Renewal & Public Improvements Committee.

A motion to receive the report of the committee was made by Member Wolfork and seconded by Member Armstrong. Five members present and approved the motion. The motion was carried.

FINANCE COMMITTEE: Charles Southall, Chr.

Mr. Southall made a report of the representative from The Graves office and about the waterline and approximate cost of installing the water line, and that committee will study same.

Mr Southall read an itemized statement of the travel expenses charged to the Urban Renewal Travel Expense Fund. Mr. Southall said that he has unpaid bills of travel expense from the Urban Renewal Director which he would like to discuss with the Committee. Thus ended the report.

A motion to receive the committee on Finance was made by Member Lackey and seconded by Member Wolfork. Five members approved the motion. The motion was carried.

WASTE COLLECTION COMMITTEE- Mr. John Armstrong, Chr.

Mr. Armstrong said that his committee has prepared directions for waste collections, that he will get with Mr. Mims on same and to put the directions in action soon. Thus ended the report.

A suspension of Rules of procedure was had to open the meeting to visitors by a motion made by Member Wolfork and seconded by Member Ellis. Each member present approved the motion. The meeting was opened to visitors.

MRS. HAZEL AUSTIN, Shepherd Lane resident, said that a representative from the Pilot Chemical Company visited residents on Shepherd Lane investigating damage done when gas fumes escaped from the firm's tanks.. The representatives were insurance adjustors who said that they would be back to see Shepherd Lane residents in three weeks but they have not returned. Mrs. Austin said that the Millcreek Valley paper carried an article that the adjustors from the Pilot Chemical Company had been to Lockland Council and had people of Lockland to fill forms. Mrs. Austin asked Council to look into this matter so that Lincoln Heights might get what is just for their shurbbery, fruit trees and other loses from the escaped gas.

President of Council, Walter Smith, asked that Council go on record of writing a letter to the Pilot Chemical Company and asking for representative to come to Council on the stated problem and express dissatisfaction over no representative coming to Lincoln Heights Council discussing contamination damages from fumes. Member Wolfork made a motion that the letter be written to the Pilot Chemical Company, Member Lackey seconded the motion. Each member present approved the motion. The motion was carried.

MR. JAMES BROWN, 1131 Jackson Ave., said that children are walking Wayne Avenue, with no sidewalks, the trucks are a menace to walkers and drivers. Wants to know what has happened to the sidewalk installation in progress.

Mr. Smith, President of Council, said that Lockland withdrew proposal on sidewalk because of the truck problem.

Mr. Brown asked why must Council discuss funds and expenses in private meetings. Mr. Smith said that some things are weighed pro and con in committee meetings that does not need to be talked about in Council meetings prolonging Council meetings. But if people wanted to come in the committee meeting we will not turn them away.

MR. DONALD TYE, 9552 Wayne Avenue, said that food at his restaurant was destroyed by the fumes from the Pilot Chemical Company.

Mr. Tye said that the business men will send letter from the Chamber of Commerce to Lockland asking them to make some disposition of Wayne Avenue as to

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FILE COPY

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Via Telefax and
Regular U.S. Mail

May 20, 1998

John M. Barkett
Allocator
Coll, Davidson, Carter, Smith, Salter & Barkett, P.A.
3200 Miami Center
201 South Biscayne Blvd.
Miami, FL 33131

RE: The Village of Lincoln Height's Initial Position Paper

Dear Mr. Barkett,

Short Statement of Range of Total Waste Delivered to Site

409.5 to 819 tons

INTRODUCTION

Essentially, little has changed with regard to the Village's position in this matter since the Village's submission of its Responses to the questionnaire. In that questionnaire the Village explained,

"With regard to the facts indicating Lincoln Heights' involvement with the Site, it's evident that Lincoln Heights' involvement was minimal. Lincoln Heights apparently only used the Site for slightly over one year. The only material deposited by the Village at the site was household trash. No commercial waste was generated or transported by Lincoln Heights. Further there is no direct evidence that any hazardous wastes were actually placed in the Landfill as a result of Lincoln Heights' actions."

John M. Barkett
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Lincoln Heights outlined in the questionnaire,

“There is no direct evidence that Lincoln Heights deposited any hazardous wastes in the Skinner Landfill. Therefore, Lincoln Heights should be found to have a zero share. Even if it is shown that the Village was responsible for hazardous wastes, considering the contributions of other parties in the suit, the Village certainly has contributed much less than one percent of the hazardous wastes at the site. As such, and considering the equities involved, the Village is plainly a *de minimis* PRP and should be allocated a zero or *de minimis* share.”

Now after the completion of the discovery phase of the ADR, the Village can assert the same argument, but considering the amount and toxicity of the wastes deposited by others, the Village can assert these claims with more vigor.

FACTS

The only documentary evidence in existence that indicates that Lincoln Heights was involved in the Skinner Landfill is contained in the original nexus materials submitted to the Village, significantly the ledgers of Elsa Skinner. Those ledgers indicate a limited involvement by the Village in the year 1967 and the first two months of 1968. There is no credible evidence in existence that indicates that the Village was involved at the site at any other time during the period Skinner was in operation. Those ledgers apparently represented accumulated totals for a number of loads which were billed collectively. (E. Skinner Depo. at 187.)

In the depositions, three individuals indicated that they believed that Lincoln Heights was involved with the Site in other ways. Mr. Skinner and Mr. Ludwick testified that they cleaned lime from Lincoln Heights' water treatment plant. Upon investigation, it became obvious that these gentlemen were confused. It is true that two water facilities exist within the boundaries of Lincoln Heights' corporation limit, but they are not in any way associated with the Village. The Village of Lockland operates a reservoir and the Southwestern Water Works operates a water treatment plant. It is likely that these gentlemen were referring to one of these facilities, probably the water treatment plant, when they testified. Regardless, the Village of Lincoln Heights has never operated a water treatment plant and therefore cannot be held responsible for any allocation for this lime.

Mr. Charles Ringel testified that the Village first used a landfill in Morrow, then moved to Skinner, then back to Morrow. He remembered seeing the Village's trucks in '62, '63 and '64 and throughout the years (Ringel Depo. at 79, 80). He doesn't explain when he saw the Village's trucks at Morrow and when at Skinner. However, his testimony is consistent with the statements of the Village's former driver, Mr. Lawson, who stated that the Village used the Morrow landfill almost exclusively except for 1967 and 68. Mr. Ringel's testimony is based upon his observations of events that occurred years ago, and on his assumptions about the amount of trash that the Village

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Page 3

would pick up and where it would prefer to deliver such trash. Very little of his testimony is based upon first hand knowledge. To the extent this testimony suggests that Lincoln Heights was at the Skinner site before 1987, it conflicts directly with the statements of Mr. Lawson and the physical evidence of Ms. Skinner's ledgers. Mr. Lawson's testimony is more reliable because he actually drove the trucks that delivered the garbage for the Village during the same time frame of 1960 - 1968. His statements, being based upon first hand knowledge, are plainly more reliable. Further, Ms. Skinner's ledgers do not indicate any billings to the Village prior to 1967. Thus, the only probative evidence is that the Village used the landfill in 1967 and the first two months of 1968.

During the compilation of this position paper, the Village's counsel learned of the existence of another driver for the Village. This driver is Chief Ernest McCowen, Jr., now the Village's police chief. Chief McCowen explained that he worked in garbage pickup from sometime in 1968 until 1982, when the Village contracted out for trash pickup and he was laid off. According to his memory, the Village dumped its trash almost constantly at the Rumpke landfill, over the entire period the Chief worked. He does remember delivering trash to the BFI landfill in Hamilton a few times and remembers delivering to the Morrow landfill "very early on". He does not ever recall delivering waste to the Skinner landfill.

The Village's counsel also spoke with Mr. Lawson again. Mr. Lawson stated that during the period which he worked, the Village owned two trucks, a 16-yard packer and a 14-yard packer. These trucks were both driven regularly to pick up the trash. He stated that even though the Village drove two trucks, this had no effect on his estimate as to how many times the Village used the Skinner landfill.

ARGUMENT

Under the Case Management Order, the Allocator is required to first make a judgment that it is "less likely than not that the party falls within at least one of the classes of parties under Section 107(a) of CERCLA." In that there is no direct evidence that the Village of Lincoln Heights deposited any hazardous wastes at the site, the Village does not qualify under Section 107(a) and a zero percent allocation should be granted.

If the Allocator decides, despite the lack of direct evidence to support such a conclusion, that the Village does qualify under Section 107(a), the Allocator is required to apply the "Gore factors" in an attempt to arrive at an equitable allocation. These factors are:

- a. The ability of the party to demonstrate that its contribution to a discharge, release or disposal of a hazardous substance can be distinguished;
- b. the amount of hazardous substances assigned to the party;
- c. the degree of toxicity or hazard of the materials assigned to the party;

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- d. the degree of involvement by the party in the generation, transportation, treatment, storage, or disposal of the substances involved;
- e. the degree of care exercised by the party with respect to the substances involved, taking into account the characteristics of the hazardous substances; and
- f. the degree of cooperation by the party with government officials to prevent harm or threat of harm to the public health or the environment at the Site.

As is outlined above, the Village's involvement with the landfill is limited to 1967 and the first two months of 1968. With the assistance of Ms. Skinner's ledgers, the Village's contribution is easily ascertainable. Ms. Skinner's ledger contains the following references to the Village:

<u>Date</u>	<u>Amount</u>
Jan. 3, 1967	\$182.00
Mar. 14, 1967	\$206.50
May 17, 1967	\$98.00
June 22, 1967	\$154.00
July 17, 1967	\$182.00
Aug. 10, 1967	\$126.00
Sep. 21, 1967	\$119.00
Oct. 27, 1967	\$126.00
Dec. 13, 1967	\$147.00
Feb. 21, 1967	\$133.00
 TOTAL	 \$1,473.50

The price per load is an issue of serious confusion. In Ms. Skinner's deposition, she indicated that a large load was represented by a 20 or 30 yard truck. (E. Skinner Depo. at pp. 197, 200.) She also indicated that for large loads, she would charge anywhere from \$20.00 to \$50.00 per load according to the time period. (E. Skinner Depo. at pp. 188, 199.) However, according to the nexus documents supplied to the Village, a receipt exists which indicates that the price per load was \$7.00. Considering the Allocator's request that he be given a range of allocation share from which to make his decision, the \$7.00 per load amount will be used to arrive at the high end of the range. Therefore:

$\$1473.50 / \$7.00 \text{ per load} = 210 \text{ loads delivered to Skinner.}$

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If this figure were doubled, to \$14.00 (which is not unreasonable considering Ms. Skinner's price testimony) this would represent 105 loads. The figure of 210 loads is also greater than Mr. Lawson's estimate. Using his statement that the Village used the landfill three times a week at the most during the period, this would represent, an outside maximum total number of loads of 180. ((52 weeks for 1967) + 4 weeks (for 1968) x 3 loads = 180 loads per week.) If the truck was not driven three times each week, but using as an average two times a week, this would result in 56 less loads or 124 loads.

Next we must determine the weight of each load. The Village will use the figure of 3.6 tons per load.¹ Therefore:

210 loads x 3.9 tons per load = 819 total tons delivered to Skinner.
105 loads x 3.9 tons per load = 409.5 total tons delivered to Skinner.
124 loads x 3.9 tons per load = 483.6 total tons delivered to Skinner.

Finally, a response cost must be applied to these tonnage totals. Courts have recognized that municipal waste generally contains less than one percent by weight of substances that the EPA considers hazardous. B.F. Goodrich v. Murtha, et al., 958 F.2d 1192, 1197 (2nd Cir, 1992). The EPA in recognizing this fact has recently published its "Policy for Municipality and Municipal Solid Waste: CERCLA Settlements at NPL Co-Disposal Sites." (Feb. 5, 1998) (copy attached.) That document discusses the difficulty in assessing hazardous wastes in municipal solid waste, but espouses a standard by which the EPA will settle municipal solid waste cleanup costs. The Village asserts that this policy should be followed by the Allocator in this instance. The EPA found that a unit cost should be allocated of \$5.30 a ton. Therefore:

819 tons x \$5.30 per ton unit cost = \$4,340.70
409.5 tons x \$5.30 per ton unit cost = \$2,167.70
483.6 tons x \$5.30 per ton unit cost = \$2,563.80

Aside from the low toxicity of Municipal Solid Waste, other issues should be considered. The City of Lincoln Heights was a municipal corporation performing a legitimate governmental function in collecting garbage from its residents. It did not collect trash from large commercial or industrial sites. Therefore the possibility of the existence of a significant amount of hazardous materials in the waste is greatly diminished.

[REDACTED]

¹ This figure is arrived at by applying the USEPA volume mass conversion factor contained in the "Policy for Municipality and Municipal EPA Solid Waste: CERCLA Settlements at NPL Co-Disposal Sites" (Feb. 5, 1998). This conversion factor is 600 lbs/cu. yd. Therefore, since two trucks were driving, one a 12 yard truck and another a 14 yard truck, an average of 13 yards will be used. Therefore, the pounds per load would equal 7,800 lbs. per truck. This would then be converted to tons per truck, reaching a figure of 3.9 tons.

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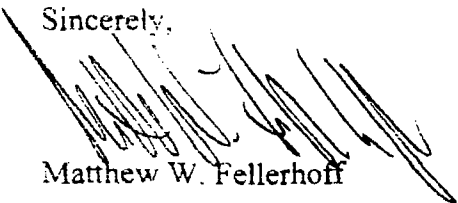
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[REDACTED]

In fact, it is plain that, but for the deposit of industrial and chemical waste in the Landfill, it would not have been placed on the National Contingency List. The Village, though it may be deemed to have contributed a minuscule amount of hazardous chemicals to the site (even though there is no evidence of that), did not cause the EPA to come in and clean up the site. The Village, in short, is not responsible for the filing of this lawsuit. Therefore, any finding outside of the range outlined above, would not represent an equitable allocation under the Case Management Order.

Finally, the Village of Lincoln Heights is a small Ohio municipality. (Under Ohio law, a Village has a population of under 5,000 -- explaining why in 1968 with a greater population the Village was a "City.") It receives its income from a small taxpayer base, which the Village needs to supply basic services to its citizens. It does not have large cash reserves. Ability to pay should be a serious consideration in any allocation and necessarily will become an issue for the Village in any potential settlement talks.

Sincerely,


Matthew W. Fellerhoff

attachment

cc: Copyplex, c/o Jim Hillman
Bill Kohbarger

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Committee Act (Pub. L. 92-463), the EPA is giving notice of the sixth meeting of the Industrial Non-Hazardous Waste Policy Dialogue Committee, also known as the Industrial Non-Hazardous Waste Stakeholders Focus Group. The purpose of this committee is to advise EPA and ASTSWMO (the Association of State and Territorial Solid Waste Management Officials) in developing voluntary guidance for the management of industrial waste in landfills, waste piles, surface impoundments, and land application units. The Focus Group will facilitate the exchange of information and ideas among the interested parties relating to the development of such guidance. The purpose of the sixth meeting will be to continue discussion of issues related to the development of such guidance. Issues to be discussed will include ground-water modeling/risk results (i.e., leachate concentration threshold values for the Tier I national approach for the four types of management units), development of a screening tool to evaluate the need for air emission controls, and waste characterization. In addition, presentations will be made to the Focus Group concerning the development of the landfill neural net software (i.e., the tool to be used by facility managers for the Tier II site-specific adjustments) and the latest draft of the CD-ROM being developed for this project. There will be an opportunity for limited public comment at the end of each day of the meeting.

DATES: The committee will meet on March 18 and 19, 1998, from 9:00 a.m. to 5:00 p.m. on March 18, and from 8:30 a.m. to 3:00 p.m. on March 19.

ADDRESSES: The location of the meeting is the Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, NW, Washington, D.C. 20008. The phone number is 202-328-2000. The seating capacity of the room is approximately 60 people, and seating will be on a first-come basis. Supporting materials are available for viewing at Docket F-96-INHA-FFFFF in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (703) 603-9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page. The material to be discussed at the March Focus Group meeting will be available for viewing in the above

docket on and after March 4, 1998. For general information, contact the RCRA Hotline at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). In the Washington metropolitan area, call 703-412-9810 or TDD 703-412-3323.

FOR FURTHER INFORMATION CONTACT:

Persons needing further information on the committee should contact Paul Cassidy, Municipal and Industrial Solid Waste Division, Office of Solid Waste, at (703) 308-7281 or e-mail at cassidy.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice is available on the Internet. Follow these instructions to access electronically:

WWW: <http://www.epa.gov/fedrgstr/>

FTP: [ftp.epa.gov](ftp://ftp.epa.gov)

Login: anonymous

Password: your Internet address

File is located in /pub/epaoswer

Background

EPA and ASTSWMO have formed a State/EPA Steering Committee to jointly develop voluntary facility guidance for the management of industrial nonhazardous waste in land-based disposal units. The purpose of the guidance document is to provide a guide to facility managers so that they can provide safe industrial waste management. The guidance document will address such topics as appropriate controls for ground-water, surface-water, and air protection, liner designs, public participation, waste reduction, daily operating practices, monitoring and corrective action, and closure and post-closure considerations.

The State/EPA Steering Committee has convened this Stakeholders Focus Group to obtain recommendations from individuals who are members of a broad spectrum of public interest groups and affected industries. All recommendations from Focus Group participants will be forwarded to the State/EPA Steering Committee for consideration, as the Stakeholders' Focus Group will not strive for consensus. The State/EPA Steering Committee will also provide an opportunity for public comment on the draft guidance document.

Copies of the minutes of all Stakeholder Focus Group meetings have been made available through the docket at the RCRA Information Center, including minutes of the previous 5 Focus Group meetings, which were held on April 11-12, 1996, September 11-12, 1996, February 19-20, 1997, May 20-21, 1997, and October 8-9, 1997.

Dated: February 6, 1998.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 98-4009 Filed 2-17-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5967-6]

Announcement and Publication of the Policy for Municipality and Municipal Solid Waste; CERCLA Settlements at NPL Co-Disposal Sites

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This policy supplements the "Interim Policy on CERCLA Settlements Involving Municipalities and Municipal Wastes" (1989 Policy) that was issued by the U.S. Environmental Protection Agency (EPA) on September 30, 1989. This policy states that EPA will continue its policy of not generally identifying generators and transporters of municipal solid waste (MSW) as potentially responsible parties at NPL sites. In recognition of the strong public interest in reducing contribution litigation, however, EPA identifies in the policy a settlement methodology for making available settlements to MSW generators and transporters who seek to resolve their liability. In addition, the policy identifies a presumptive settlement range for municipal owners and operators of co-disposal sites on the NPL who desire to settlement their Superfund liability.

FOR FURTHER INFORMATION CONTACT:

Leslie Jones (202-564-5123) or Doug Dixon (202-564-4232), Office of Site Remediation Enforcement, 401 M. St. S.W., 2273A, Washington, D.C. 20460. This policy is available electronically at <http://www.epa.gov/oeca/osre.html>. Copies of this policy can be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Each order must reference the NTIS item number PB98-118003. For telephone orders or further information on placing an order, call NTIS at (703) 487-4650 or (800) 553-NTIS. For orders via E-mail/Internet, send to the following address: orders@ntis.fedworld.gov.

Dated: February 5, 1998.

Steven A. Herman,

*Assistant Administrator, Office of
Enforcement and Compliance Assurance.*

**Policy for Municipality and Municipal
Solid Waste CERCLA Settlements at
NPL Co-Disposal Sites**

I. Purpose

The purpose of this policy is to provide a fair, consistent, and efficient settlement methodology for resolving the potential liability under CERCLA¹ of generators and transporters of municipal sewage sludge and/or municipal solid waste at co-disposal landfills on the National Priorities List (NPL), and municipal owners and operators of such sites. This policy is intended to reduce transaction costs, including those associated with third-party litigation, and to encourage global settlements at sites.

II. Background

Currently, there are approximately 250 landfills on the NPL that accepted both municipal sewage sludge and/or municipal solid waste (collectively referred to as "MSW") and other wastes, such as industrial wastes, containing hazardous substances. These landfills, which are commonly referred to as "co-disposal" landfills, comprise approximately 23% of the sites on the NPL. Many of these landfills were or are owned or operated by municipalities in connection with their governmental function of providing necessary sanitation and trash disposal services to residents and businesses.

EPA recognizes the differences between MSW and the types of wastes that usually give rise to the environmental problems at NPL sites. Although MSW may contain hazardous substances, such substances are generally present in only small concentrations. Landfills at which MSW alone was disposed of do not typically pose environmental problems of sufficient magnitude to merit designation as NPL sites. In the Agency's experience, and with only rare exceptions do MSW-only landfills become Superfund sites, unless other types of wastes containing hazardous substances, such as industrial wastes, are co-disposed at the facility. Moreover, the cost of remediating MSW is typically lower than the cost of remediating hazardous waste, as evidenced by the difference between closure/post-closure requirements and corrective action costs incurred at facilities regulated under Subtitles D

and C of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.* (RCRA).

On December 12, 1989, EPA issued the "Interim Policy on CERCLA Settlements Involving Municipalities and Municipal Wastes" (the 1989 Policy) to establish a consistent approach to certain issues facing municipalities and MSW generators/transporters. The 1989 Policy sets forth the criteria by which EPA generally determines whether to exercise enforcement discretion to pursue MSW generators/transporters as potentially responsible parties (PRPs) under § 107(a) of CERCLA. The 1989 Policy provides that EPA will not generally identify an MSW generator/transporter as a PRP for the disposal of MSW at a site unless there is site-specific evidence that the MSW that party disposed of contained hazardous substances derived from a commercial, institutional or industrial process or activity. Despite the 1989 Policy, the potential presence of small concentrations of hazardous substances in MSW has resulted in contribution claims by private parties against MSW generators/transporters.

Additionally, the 1989 Policy recognizes that municipal owners/operators, like private parties, may be PRPs at Superfund sites. The 1989 Policy identifies several settlement provisions that may be particularly suitable for settlements with municipal owners/operators in light of their status as governmental entities.

Consistent with the 1989 Policy, the Agency will continue its policy to not generally identify MSW generators/transporters as PRPs at NPL sites, and to consider the performance of in-kind services by a municipal owner/operator as part of that party's cost share settlement. In recognition of the strong public interest in reducing the burden of contribution litigation, however, this policy supplements the 1989 Policy by providing for settlements with MSW generators/transporters and municipal owners/operators that wish to resolve their potential Superfund liability and obtain contribution protection pursuant to Section 113(f) of CERCLA.

III. Definitions

For purposes of this policy, EPA defines municipal solid waste as household waste and solid waste collected from non-residential sources that is essentially the same as household waste. While the composition of such wastes may vary considerably, municipal solid waste generally is composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, glass, and aluminum) and

can contain small amounts of other wastes as typically may be accepted in RCRA Subtitle D landfills. A contributor of municipal solid waste containing such other wastes may not be eligible for a settlement pursuant to this policy if EPA determines, based upon the total volume or toxicity of such other wastes, that application of this policy would be inequitable.²

For purposes of this policy, municipal solid waste and municipal sewage sludge are collectively referred to as MSW; all other wastes and materials containing hazardous substances are referred to as non-MSW. Municipal sewage sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage sludge, but does not include sewage sludge containing residue removed during the treatment of wastewater from manufacturing or processing operations.

The term municipality refers to any political subdivision of a state and may include a city, county, town, township, local public school district or other local government entity.

IV. Policy Statement

EPA intends to exercise its enforcement discretion to offer settlements to eligible parties that wish to resolve their CERCLA liability based on a unit cost formula for contributions by MSW generators/transporters and a presumptive settlement percentage and range for municipal owners/operators of co-disposal sites.

**MSW Generator/Transporter
Settlements**

For settlement purposes, EPA calculates an MSW generator/transporter's share of response costs by multiplying the known or estimated quantity of MSW contributed by the generator/transporter by an estimated unit cost of remediating MSW at a representative RCRA Subtitle D landfill. This method provides a fair and efficient means by which EPA may settle with MSW generators/transporters that reflect a reasonable approximation of the cost of remediating MSW.

This policy's unit cost methodology is based on the costs of closure/post-closure activities at a representative RCRA Subtitle D landfill. EPA's estimate of the cost per unit of remediating MSW at a representative

¹ The Comprehensive Environmental Response, Compensation and Liability, 42 U.S.C. 9601, *et seq.*

² For example, such other wastes may not constitute municipal solid waste where the cumulative amount of such other wastes disposed of by a single generator or transporter is larger than the amount that would be eligible for a de minimis settlement.

Subtitle D landfill is \$5.30 per ton.³ That unit cost is derived from the cost model used in EPA's "Regulatory Impact Analysis for the Final Criteria for Municipal Solid Waste Landfills," (RIA).⁴

To calculate the unit cost, the Subtitle D landfill cost model was applied to account for the costs associated with the closure/post-closure criteria of part 258⁵ (excluding non-remedial costs, such as siting and operational activities) for two types of cost scenarios: basic closure cover requirements at a Subtitle D landfill; and closure requirements supplemented by a typical corrective action response at a Subtitle D landfill. Based on the costs associated with those activities, EPA developed a cost per ton for each scenario. In recognition of EPA's estimate that approximately 30–35% of existing unlined MSW landfills will trigger corrective action under part 258,⁶ EPA used a weighted average of both unit costs to develop a final unit cost. Specifically, EPA averaged the unit costs giving a 67.5% weight to the basic closure cover unit cost and a 32.5% weight to the multilayer cover and corrective action scenario. The resulting unit cost, \$5.30 per ton reflects (as stated in the Subtitle D RIA) is the likelihood that unlined MSW landfills, such as those typically found on the NPL, would trigger corrective action under part 258.

In applying the RIA model to develop unit costs, EPA used the average size of co-disposal sites on the NPL, 69 acres. Other landfill assumptions from the RIA that EPA used in running the model include the following: a 20-year operating life (also consistent with the average NPL co-disposal site operating life); 260 operating days per year; a below-grade thickness of 15 feet with 50 percent of waste below grade; a compacted waste density of 1,200 lb/cy;⁷ and a landfill input of 289.3 tons per day.⁸ The present value cost is calculated assuming a 7 percent discount rate.

When seeking to apply the unit cost to parties' MSW contributions, in some

cases a party's contribution is quantified by volume (cubic yards) rather than weight (pounds). Absent site-specific contemporaneous density conversion factors, Regions may use the following presumptive conversion factors that are representative of MSW. MSW at the time of collection from places of generation (i.e., "loose" or "curbside" refuse) has a density conversion factor of 100 lbs./cu. yd.⁹ MSW at the time of transport in or disposed by a compactor truck has a density conversion factor of 600 lbs./cu. yd.¹⁰ In cases involving municipal sewage sludge, a party's contribution may first be converted from a volumetric value to a wet weight value using a water density of 8.33 lbs./gallon¹¹ and the specific gravity of the municipal sewage sludge.¹² The wet weight may then be converted to a dry weight using an appropriate value for the percentage of solids in the municipal sewage sludge. These conversion factors, in conjunction with the unit cost, can be used to develop a total settlement amount for the MSW attributable to an individual party.

In order to be eligible for a settlement under this policy, an MSW generator/transporter must provide all information requested by EPA to estimate the quantity of MSW contributed by such party. EPA may solicit information from other parties where appropriate to estimate the quantity of a particular generator's/transporter's contribution of MSW. Where the party has been forthcoming with requested information, but the information is nonetheless imperfect or incomplete, EPA will construct an estimate of the party's quantity incorporating reasonable assumptions based on relevant information, such as census data and national per capita solid waste generation information.

MSW generators/transporters settling pursuant to this policy will be required to waive their contribution claims against other parties at the site. In the situation where there is more than one generator or transporter associated with the same MSW, EPA will not seek multiple recovery of the unit cost rate

from different generators or transporters with respect to the same units of MSW. EPA will settle with one or all such parties for the total amount of costs associated with the same waste based on the unit cost rate. Notwithstanding the general requirement that settlers under this policy must waive their contribution claims, a settlor will not be required to waive its contribution claims against any nonsettling non-de micromis generators or transporters associated with the same waste. However, in regards to these individual payments for the same MSW, EPA will not become involved in determining the respective shares for the parties.

It is an MSW generator's or transporter's responsibility to notify EPA of its desire to enter into settlement negotiations pursuant to this proposal. Absent the initiation of settlement discussions by an MSW G/T, EPA may not take steps to pursue settlements with such parties.

Municipal Owner/Operator Settlements

Pursuant to this policy, the U.S. will offer settlements to municipal owners/operators of co-disposal facilities who wish to settle; those municipal owners/operators who do not settle with EPA will remain subject to site claims by EPA consistent with the principles of joint and several liability, and claims by other parties.

EPA recognizes that some of the co-disposal landfills listed on the NPL are or were owned or operated by municipalities in connection with their governmental function to provide necessary sanitation and trash disposal services to residents and businesses. EPA believes that those factors, along with the nonprofit status of municipalities and the unique fiscal planning considerations that they face, warrant a national settlement policy that provides municipal owners/operators with settlements that are fair, reasonable, and in the public interest. As discussed below, EPA has based the policy on what municipalities have historically paid in settlements at such sites.

This policy establishes 20% of total estimated response costs for the site as a presumptive baseline settlement amount for an individual municipality to resolve its owner/operator liability at the site. Regions may offer settlements varying from this presumption consistent with this policy, generally not to exceed 35%, based on a number of site-specific factors. The 20% baseline is an individual cost share and pertains solely to a municipal owner/operator's liability as an owner/operator. EPA recognizes that, at some

³ This rate will be adjusted over time to reflect inflation.

⁴ PB-92-100-841 (EPA's Office of Solid Waste and Emergency Response); see also RIA Addendum, PB-92-100-858.

⁵ Part 258 is the set of regulations that establish landfill operation and closure requirements for RCRA Subtitle D landfills.

⁶ See Addendum to RIA at II-12 n. 13.

⁷ September 22, 1997 memo to the file by Leslie Jones (conversation with Dr. Robert Kerner, Drexell University, head and founder of the Geosynthetic Institute).

⁸ The RIA model calculates a ton per day input of 289.3 based on the 69-acre size, the waste density factor of 1200 lb./cy, and a total of 5200 operating days during the life of the landfill.

⁹ "Estimates of the Volume of MSW and Selected Components in Trash Cans and Landfills" (Feb. 1990), prepared for the Council for Solid Waste Solutions by Franklin Associates, Ltd.; "Basic Data: Solid Waste Amounts, Composition and Management Systems" (Oct. 1985—Technical Bulletin #85-6), National Solid Waste Management Association.

¹⁰ Id.

¹¹ "Final Guidance on Preparing Waste-in Lists and Volumetric Rankings for Release to Potentially Responsible Parties (PRPs) Under CERCLA" (Feb. 22, 1991), OSWER Directive No. 9835.16.

¹² Specific density is determined by dividing the density of a material by the density of water.

sites, there may be multiple liable municipal owners/operators and EPA may determine that it is appropriate to settle for less than the presumption for an individual owner/operator. A group or coalition of two or more municipalities with the same nexus (i.e., basis for liability) to a site, operating at the same time or during continuous operations under municipal control, should be considered a single owner/operator for purposes of developing a cost share (e.g., two or more cities operated together in joint operations; in cost sharing agreements; or continuously where such a group's membership may have changed in part). In cases where a municipal owner/operator is also liable as an MSW generator/transporter, EPA may offer to resolve the latter liability for an additional payment amount developed pursuant to the MSW generator/transporter settlement methodology.

Under this policy, EPA may adjust the settlement in a particular case upward from the presumptive percentage (generally not to exceed a 35% share) based on consideration of the following factors:

(1) Whether the municipality or an officer or employee of the municipality exacerbated environmental contamination or exposure (e.g., the municipality permitted the installation of drinking water wells in known areas of contamination); and

(2) Whether the owner/operator received operating revenues net of waste system operating costs during ownership or operation of the site that are substantially higher than the owner/operator's presumptive settlement amount pursuant to this policy.

The Regions may adjust the presumptive percentage downward based on whether the municipality, of its own volition (i.e., not pursuant to a judicial or administrative order) made specific efforts to mitigate environmental harm once that harm was evident (e.g., the municipality installed environmental control systems, such as gas control and leachate collection systems, where appropriate; the municipality discontinued accepting hazardous waste once groundwater contamination was discovered; etc.). The Regions may also consider other relevant equitable factors at the site.

The 20% baseline amount is based on several considerations. EPA examined the data from past settlements of CERCLA liability between the United States, or private parties, and municipal owners/operators at co-disposal sites on the NPL where there were also PRPs who were potentially liable for the disposal of non-MSW, such as industrial

waste. EPA excluded from analysis sites where the municipal owner/operator was the only identified PRP because those are not the types of situations that this policy is intended to address. Thus, settlements under this policy are appropriate only at sites where there are multiple, viable non-*de minimis* non-MSW generators/transporters. EPA's analysis of past settlements indicated an average municipality settlement amount of 29% of site costs.

In reducing the 29% settlement average to a 20% presumptive settlement amount, EPA considered two primary factors. First, in examining the historical settlement data, EPA considered that the relevant historical settlements typically reflected resolution of the municipality's liability not only as an owner/operator, but also as a generator or transporter of MSW. Under this policy, a municipality's generator/transporter liability will be resolved through payment of an additional amount, calculated pursuant to the MSW generator/transporter methodology.

Second, the owner/operator settlement amounts under this policy also reflect the requirement that municipal owners/operators that settle under this policy will be required to waive all contribution rights against other parties as a condition of settlement. By contrast, in many historical settlements, municipal owners/operators retained their contribution rights and hence were potentially able to seek recovery of part of the cost of their settlements from other parties.

V. Application

This policy applies to co-disposal sites on the NPL. This policy is intended for settlement purposes only and, therefore, the formulas contained in this policy are relevant only where settlement occurs. In addition, this policy does not address claims for natural resource damages.

This policy does not apply to MSW generators/transporters who also generated or transported any non-MSW containing a hazardous substance, except to the extent that a party can demonstrate to EPA's satisfaction the relative amounts of MSW and non-MSW it disposed of at the site and the composition of the non-MSW. In such cases, EPA may offer to resolve the party's liability with respect to MSW as provided in this policy at such time as the party also agrees to an appropriate settlement relating to its non-MSW on terms and conditions acceptable to EPA.

EPA does not intend to reopen settlements with the U.S., nor does this

policy have any effect on unilateral administrative orders (UAOs) issued prior to issuance of the policy. At sites for which prior settlements have been reached but where MSW parties are subject to third party litigation, the U.S. may settle with eligible parties based on the formulas established in this policy and may place those settlement funds in a site-specific special account. At sites where no parties have settled to perform work, where the U.S. is seeking to recover costs from private parties, and where the private parties have initiated contribution actions against municipalities and other MSW generators/transporters, the U.S. will seek to apply the most expeditious methods available to resolve liability for those parties pursued in third-party litigation, including, in appropriate circumstances, application of this policy. EPA may require settling parties to perform work under appropriate circumstances, in a manner consistent with the settlement amounts provided in this policy.

Because one of the goals of this policy is to settle for a fair share from MSW generators/transporters and municipal owners/operators, EPA will consider in determining a settlement amount under this policy any claims, settlements or judgments for contribution by a party seeking settlement pursuant to this policy. In no circumstances should a party that receives monies from contribution settlements in excess of its actual cleanup costs receive a benefit from this policy.

The United States will not apply this policy where, under the circumstances of the case, the resulting settlement would not be fair, reasonable, or in the public interest. Regions should carefully consider and address any public comments on a proposed settlement that questions the settlement's fairness, reasonableness, or consistency with the statute.

VI. Financial Considerations in Settlements

In cases under this policy, EPA will consider all claims of limited ability to pay. EPA intends in the future to develop guidelines regarding analysis of municipal ability to pay. Parties making such claims are required to provide EPA with documentation deemed necessary by EPA relating to the claim, including potential or actual recovery of insurance proceeds. Recognizing that municipal owners/operators often are uniquely situated to perform in-kind services at a site (e.g., mowing, road maintenance, structural maintenance), EPA will carefully consider any forms of in-kind services that a municipal owner/

operator may offer as partial settlement of its cost share.

VII. Use with Other Policies

This policy is intended to be used in concert with EPA's existing guidance documents and policies (e.g., orphan share, de micromis, residential homeowner, etc.), and so other EPA settlement policies may also apply to these sites. For example, those parties eligible for orphan share compensation under EPA's orphan share policy will continue to be eligible for such compensation.¹³

VIII. Consultation Requirement

The first two settlements in each Region reached pursuant to this policy require the concurrence of the Director of the Office of Site Remediation Enforcement (OSRE). All subsequent settlements with municipal owners/operators at co-disposal sites require the concurrence of the Director of OSRE. If you have any questions regarding this policy please call Leslie Jones (202) 564-5123 or Doug Dixon (202) 564-4232.

Notice: This guidance and any internal procedures adopted for its implementation are intended exclusively as guidance for employees of the U.S. Government. This guidance is not a rule and does not create any legal obligations. Whether and how the United States applies the guidance to any particular site will depend on the facts at the site.

[FR Doc. 98-4007 Filed 2-17-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5967-7]

Notice of Proposed Administrative De Micromis Settlement Pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act, Regarding the Pollution Abatement Services Superfund Site, Oswego, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C.

9622(i), the U.S. Environmental Protection Agency (EPA), Region II, announces a proposed administrative "de micromis" settlement pursuant to section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Pollution Abatement Services Superfund Site (Site). The Site is located near the eastern boundary of the City of Oswego, New York. The Site is included on the National Priorities List established pursuant to section 105(a) of CERCLA, 42 U.S.C. 9605(a). This document is being published pursuant to section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment.

The proposed administrative settlement has been memorialized in an Administrative Order on Consent (Order) between EPA and Oneida, Ltd. (Respondent). Respondent contributed a minimal amount of hazardous substances to the Site and is eligible for a de micromis settlement under EPA's policies and section 122(g) of CERCLA. This Order will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate that this Order is inappropriate, improper or inadequate, and EPA, in accordance with section 122(i)(3) of CERCLA, modifies or withdraws its consent to this agreement.

DATES: Comments must be provided on or before March 20, 1998.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007 and should refer to: "Pollution Abatement Services Superfund Site, U.S. EPA Index No. II-CERCLA-97-0210". For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Carol Y. Berns; Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007. Telephone: (212) 637-3177.

Dated: January 29, 1998.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 98-4008 Filed 2-17-98; 8:45 am]

BILLING CODE 6560-50-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 63 Fed. Reg. 7170.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, February 24th, 1998.

CHANGE IN THE MEETING: The Meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663-4070.

Dated: February 13, 1998.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 98-4242 Filed 2-13-98; 3:35 pm]

BILLING CODE 6750-06-M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 11, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 20, 1998.

¹³ The orphan share policy will continue, however, to apply towards total site costs and not an individual settlor's settlement share.

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GEORGE F. MOELLER

March 31, 1998

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Via Telefax

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Suite 400
Cincinnati, Ohio 45202

Via Telefax

Responses to Follow-Up Questions For Village of Lincoln Heights

1. In response to question 16 of the ADR Questionnaire, the Village of Lincoln Heights stated that it had "no knowledge that it transported material to any other site during the relevant time period." It further stated that "[b]efore and after 967

and 1968, the Village transported its residential trash to other landfills in the vicinity.” Please explain what was meant by these seemingly contradictory statements. Furthermore, please provide information regarding what other sites the village of Lincoln Heights transported its waste to before and after 1967 and 1968. If the Village cannot provide this information, please explain why.

The Village was incorporated in 1946. Prior to 1960, the Village was not responsible for residential trash pickup in the City. That duty was handled by private contractors hired by individual residents. While the documentary record is sparse, based upon the minutes that exist and upon conversation with individuals who worked at the time, the Village delivered all residential garbage to a landfill in Morrow Ohio. Again the only connection to the Skinner landfill, other than the nexus documents, is the memory of Mr. Lawson. His recollections will be addressed in the answer to follow up question #3. It is apparent through the minutes that the Village continued to deliver its residential trash to the Morrow landfill, through at least the mid seventies. Though the record is silent, according to various individuals, at some point in time in the 1970's, the Village began dumping its residential trash at the Rumpke landfill. There is some documentary evidence which indicates that the Village, for a short time, dumped it's garbage at the Clark incinerator. (See attached Resolution #81-R-58(A)) In 1982, the Village granted an exclusive contract to Jennings Drayage, Inc. to pick up the trash at residences. (See attached ordinance No. 82-0-39) In 1983, as was

explained in the Village's original responses, the Village contracted with Rumpke to pick up the trash. This relationship continued up and through 1990.

2. In its response to the questionnaire, the Village of Lincoln Heights indicates that it believes that no relevant documents are in existence because it believes that all such documents have been destroyed. Please explain what efforts were taken by the Village of Lincoln Heights to locate and/or discover any documents that may still be in existence relating to its waste disposal practices during the relevant time period.

As was stated in the original response, most of the Village's records were destroyed pursuant to Ohio law. Therefore the only available sources of information are the Village minutes, ordinances, resolutions and the memory of former Village officials and employees. The documentary evidence was reviewed for the applicable time period and the individuals were interviewed.

3. In the Village of Lincoln Heights' supplement to its response, it indicates that Mr. Leonard Lawson drove the garbage truck in 1967-1968. Did he drive this truck at any other times during the relevant time period? Does he remember waste being brought to the Skinner Site during those times? If not, does he remember if the waste was disposed of at another landfill?

Upon further questioning, Mr. Lawson states that he drove the

Village's garbage truck from 1960 only through 1967. He remembers using the Morrow landfill exclusively, except as is indicated in the first response. Upon further questioning, he now indicates that the Village used the Clark incinerator a few times over the entire period on an "Emergency basis".

4. In the Village of Lincoln Heights' supplement to its response, it states that "typically the Village took their residential garbage to a Landfill in Morrow, Ohio." Please provide information regarding whether Mr. Leonard remembers where the waste was disposed of when it was not brought to Morrow? Was Morrow the only other landfill used by Lincoln heights, i.e., typically suggests that at times the Village of Lincoln Heights' residential garbage was brought to another landfill.

Except as is explained above, the Village disposed of all residential garbage at the Morrow landfill. Mr. Guy Westmoreland also remembers that the Morrow landfill, which was run by the then Mayor of Morrow, was the landfill with which the Village contracted with.

5. In the Village of Lincoln Heights' supplement to its response, it states that "in order to be able to dump their load of garbage and return to Village in time to fill up the truck one more time," the Village dumped the first load at the Skinner Landfill. Where was the second load brought? Please further clarify the

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statement made by the Village of Lincoln Heights in the supplement to its response, that "the Skinner landfill was used at the most three times a week."

Does the phrase "three times a week" mean that Mr. Leonard made a total of three trips per week to the Site, or that waste was dumped at the Site three days a week, sometimes twice a day?

According to Mr. Lawson, the Village never used the Skinner landfill more than once a day. The second load on such a day was brought to the Morrow landfill.

Additional note. - There was testimony in the depositions of Mr. Ray Skinner and of Mr. Roger Ludwick that lime from Village of Lincoln Height's water treatment plant was dumped at the Skinner landfill. While there are two water treatment plants within the Village, they are not owned by the Village. The Southwestern water works operates a water treatment plant at the corner of Lindy Ave and Mangham Dr. The Village of Lockland has a

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reservoir at the corner of Adams Street and Carey Street. Therefore, while such plants may be located within the boundaries of Lincoln Heights, they have never been operated by Lincoln Heights and cannot serve as any basis for increased liability.

Respectfully Submitted,



Matthew W. Fellerhoff

CITY OF LINCOLN HEIGHTS
HAMILTON COUTNY, OHIO
RESOLUTION NO. 81-R- 58 (A)

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER
INTO AGREEMENT WITH CLARKE INCINERATOR, INC. FOR
REFUSE DISPOSAL.

- WHEREAS: The City of Lincoln Heights, Ohio, has use
Clarke Incinerator for refuse disposal on
a trail basis for sixty (60) days; and
- WHEREAS: The City Manager has conducted an analysis
of present disposal system and Clarke Incinerator
and recommend that the City enter into agreement
with Clarke Incinerator for refuse disposal.

NOW THEREFORE, be it resolved by the City Council of the
City of Lincoln Heights, Ohio, that:

- SECTION 1. The City Manager is authorized to enter into
agreement with Clarke Incinerator for a period
of four (4) months August 21, 1981, through
December 31, 1981.
- SECTION 2. This contract is between the City of Lincoln
Heights and Clarke Incinerator for the disposal
of garbage at a average of 140-200 yards
weekly at two (2.00) dollars per cubic yard.
- SECTION 3. This resolution shall go into effect immediately
upon passage.

PASSED:

September 28, 1981

ATTEST:

Dorothy Fletcher
Dorothy Fletcher,
Clerk of Council

James D. D. D. D.
Mayor

CITY OF LINCOLN HEIGHTS
HAMILTON COUNTY OHIO

ORDINANCE NO. 82-0-39

Repealing Ordinance No. 82-0-18 and authorizing the City Manager to execute a contract with Jennings Drayage, Inc. for the collection and disposal of solid waste in the City of Lincoln Heights, Ohio.

Whereas, pursuant to the direction of the Financial Planning and Supervision Commission appointed by the Governor for the City of Lincoln Heights, it has been determined that it is more economically feasible to have a reputable private collector to collect and dispose of solid waste for the citizens of the City of Lincoln Heights; and

Whereas, after a legal bidding process, the City by Ordinance No. 82-0-35 has awarded an exclusive contract to Jennings Drayage, Inc. as the best and lowest bidder for the collection and disposal of solid waste materials for the citizens of Lincoln Heights; and

Whereas, the City, pursuant to said bid award, has decided to enter into an exclusive contract with Jennings Drayage, Inc. under said bid award, effective November 1, 1982, for the collection and disposal of garbage and waste materials; and

Whereas, Council, with the approval of the Financial Planning and Supervision Commission, has decided upon a monthly solid waste collection fee to be charged against each family dwelling unit and each business or commercial establishment during the existence of the Fiscal Emergency Status of the City of Lincoln Heights; and

Whereas, said monthly solid waste collection fee shall consist of the monthly contract price of Jennings Drayage, Inc., administrative costs of the City and a reasonable prorated amount for revenue purposes for liquidation of the present indebtedness incurred by the City in past waste collection services;

Now Therefore, Be It Ordained by the Council of the City of Lincoln Heights, Hamilton County, Ohio:

SECTION I: Ordinance No. 82-0-18 ordaining supplementary sections 50.01 to 50.99, inclusive, Lincoln Heights Code of Ordinances is hereby repealed.

SECTION II: The City Manager is hereby authorized to enter into an exclusive contract, attached hereto and made part hereof, with Jennings Drayage, Inc. for the collection and disposal of solid waste for the period commencing November 1, 1982 and ending December 31, 1986.

SECTION III: The rate to be charged by the City to each of user of solid waste collection services for one solid waste collection per week shall be \$8.00 per month for each family dwelling unit and each business or commercial unit not using dumpsters. For certain businesses and apartment buildings renting or leasing dumpsters, Jennings Drayage, Inc. will collect and dispose of the solid waste in such containers or dumpsters as often as the owners of such properties desire. The owner renting or leasing a dumpster shall pay the City \$3.00 per cubic yard per collection based upon the number of cubic yards in such containers or dumpsters. By

way of illustration, an apartment building utilizing one dumpster which contains three cubic yards requiring one collection per week would pay \$38.97 per month (three cubic yards x \$3.00 x 4.33 weeks per month = \$38.97 per month.) Jennings Drayage, Inc., pursuant to its contractual obligations with the City shall provide sufficient containers or dumpsters to those businesses and apartment buildings requesting the same.

- SECTION IV: The term "solid waste" shall mean all trash, rubbish, garbage and other refuse or discarded materials but does not include industrial waste or liquid waste.
- SECTION V: All accounts shall be considered delinquent if not paid by the fifteenth (15th) day of the month for which service is rendered.
- SECTION VI: The use of proceeds by the City from the collection of waste collection rates assessed hereunder during the existence of the Fiscal Emergency Status shall be restricted to the payment of waste collection costs and to the liquidation of the indebtedness incurred by the City for past waste collection services.
- SECTION VII: Under the contract between Jennings Drayage, Inc. and the City beginning November 1, 1982, Jennings Drayage, Inc. is the sole and exclusive private waste collector for all citizens in the City of Lincoln Heights and after the expiration of the private contracts existing at the time of the passage of this Ordinance, the collection and disposal of garbage and waste by all other private waste collectors shall cease and desist.
- SECTION VIII: The City Manager shall have the authority to make reasonable regulations concerning the collection, disposal, and hauling of garbage and waste materials over City streets.
- SECTION IX: Any person, firm or corporation violating this ordinance shall be deemed guilty of a minor misdemeanor. Each day such violation is committed shall constitute a separate offense and shall be punishable hereunder. The City shall have the right to proceed in a manner provided by law for the collection of unpaid charges.
- SECTION X. This ordinance is an emergency measure necessary for the immediate preservation of the public peace, health, welfare and safety of Lincoln Heights and shall go into effect immediately. The reason for said emergency is the urgent necessity to establish a more economical sound waste collection procedure for the citizens of Lincoln Heights.

PASSED: October 29, 1982

City of Lincoln Heights, Ohio

James E. Mobley
James E. Mobley, Mayor

Attest:

Dorothy Fletcher
Dorothy Fletcher
Clerk of Council

FILE 604

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November 10, 1997

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RE: Supplement to The Village of Lincoln Heights' Responses
to Skinner Landfill ADR Questionnaire

Dear Mr. Barkett and Mr. Hillman:

It has come to my attention that another individual who drove garbage trucks for the Village of Lincoln Heights is currently living in Cincinnati. His name is Mr. Leonard Lawson of 5864 Rhode Island Avenue, Apt. #2, Cincinnati, OH 45237. Mr. Lawson has explained to me that he was the fire chief of the City (Lincoln Heights was a city under Ohio Law at the time) in 1967-68, however, he also drove the garbage truck. Mr. Lawson explained that during the relevant time period he was driving every day to pick up the residential garbage in the Village. Mr. Lawson does remember the Skinner Landfill. He stated that typically the Village took their residential garbage to a landfill in Morrow, Ohio. The Village would occasionally take the residential trash to the Skinner Landfill. This would happen when the truck was filled early in the day, necessitating two trips. The Skinner Landfill was closer in proximity to the Village than the Morrow Landfill. Therefore, in order to be able to dump their load of garbage and return to the

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A LEGAL PROFESSIONAL ASSOCIATION

John M. Barkett
Copyplex
November 10, 1997
Page 2

Village in time to fill up the truck one more time, Mr. Lawson and company would go to the Skinner Landfill. Mr. Lawson stated that the Skinner Landfill was used at the most three times a week. The Skinner Landfill was not the primary location for dropping off the garbage. The garbage was restricted to residential trash pick up, though the Village did pick up at small grocery stores in the City also. I hope this additional information is helpful.

Sincerely,



Matthew W. Fellerhoff

cc: Bill Kohbarger
William A. McClain

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